Before the
Administrative Hearing Commission
State of Missouri

STATE BOARD OF REGISTRATION FOR THE HEALING ARTS, Petitioner, vs. ANTOINE M. ADEM, M.D., Respondent.	)	No. 12-0526 HA

DECISION

Antoine M. Adem, M.D., is subject to discipline because he forged a letter in support of his care of a patient. The State Board of Registration for the Healing Arts ("the Board") failed to meet its burden of proof as to the other allegations in its complaint.

Procedure

On April 3, 2012, the Board filed a complaint seeking to discipline Adem. On April 6, 2012, we served Adem with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. On July 9-10, 2013, we held a hearing on the complaint. Glenn E. Bradford and Nancy L. Skinner, with Glenn E. Bradford & Associates, P.C., represented the Board. Elkin L. Kistner, with Bick & Kistner, PC, and Jared L. Craighead, with The Jared L. Craighead Law Firm, represented Adem. The matter became ready for our decision on October 10, 2013, the date the last written argument was due.

The Board alleges that Adem forged a letter (Count I) and that his treatment of several patients is cause for discipline (Counts II, III, IV, V, IX, X, and XI).[1] For the reasons set forth in our Conclusions of Law – Motion in Limine/Offer of Proof, we do not make any findings of fact other than those that pertain to Count I and the motions filed and orders issued addressing the testimony of the Board's expert witness Dr. Morton Kern.

Findings of Fact

1. Adem is licensed by the Board as a physician and surgeon. This license was first issued on July 14, 1999. Adem's certificate of registration is current, and was current and active at all relevant times.

2. Adem generally practices in the area of cardiology and maintains an office at 170 Industrial Drive, Suite 105, Crystal City, Missouri.

Count I

3. In March 2008, a case of Adem's, Patient S.B., was designated a Level IV case[2] by the Medical Care Appraisal Committee ("MCAC") at Jefferson Regional Medical Center ("JRMC").

4. On May 12, 2008, an external review was obtained for the Level IV case, Patient S.B.

5. On May, 21 2008, JRMC's Medical Executive Committee ("MEC") requested that Adem provide responses to issues raised by the external review regarding his treatment of S.B.

6. On July 7, 2008, Adem submitted a letter to JRMC's Chief Executive Officer, Lloyd Ford, which purported to be from Timothy Catchings, M.D. ("the Catchings letter") in support of Adem's treatment of S.B.

[1] The Board dropped Counts VI, VII, and VIII.

[2] No evidence was presented as to what this designation means. If this designation had any significance, it was not addressed by the Board.

7. The Catchings letter was on University of Missouri, Department of Internal Medicine, Division of Cardiology letterhead, and stated:

> July 7, 2008
>
> To Whom It May Concern,
>
> I have reviewed the case of [S.B.] as requested by Dr. Antoine Adem. The following materials were reviewed:
>
> 1. cineangiogram, hemodynamic tracings
> 2. clinic notes, including medication lists
> 3. copies of stress tests, echoes, laboratory testing
>
> Upon reviewing the above mentioned data and according to the American College of Cardiology 2005 guidelines update for percutaneous coronary interventions, the current case scenario constitutes a reasonable indication for percutaneous intervention based on the following:
>
> 1. patient symptoms (CCS III)
> 2. evidence of ischemia on perfusion imaging
> 3. high likelihood of success
> 4. the fact that the patient's symptoms resolved after intervention
>
> Sincerely,
>
> (signature)
>
> Timothy Catchings M.D., F.A.C.E., F.C.C.P., F.S.C.A.I.
> Associate Professor of Cardiology
> University of Missouri, Columbia[3]

8. The Catchings letter was not from Catchings, but was created and signed by Adem without Catchings' knowledge.

9. By letter dated August 17, 2010, Catchings wrote a letter after reviewing S.B.'s medical records. He stated:

> Based on the above listed facts, I conclude that it was reasonable for the operator to place a stent in the proximal RCA.

[3] Exhibit 3 to Petitioner's exhibit 1.

> Also Dr. Adem supplied me with a copy of the letter dated July 7, 2008, that has my name on it. Although I did not sign that letter, I believe that letter is consistent with my conclusion upon review of the case. I do not disagree with the content of that letter.[4]

10. In a letter to the Board dated September 23, 2010, Adem admitted to falsifying and submitting the Catchings letter.

Motion in Limine/Offer of Proof[5]

11. On September 25, 2012, the parties jointly filed a motion for the approval of proposed case management plan ("the Plan"), which we granted by order issued October 10, 2012.

12. Under the Plan, the Board was to designate its retained and non-retained expert witnesses and produce all of the particulars set forth in Supreme Court Rule 56.01 no later than February 1, 2013. The Board failed to do this, and Adem filed a motion for partial summary decision on February 8, 2013. On February 13, 2013, the Board filed a response to the motion and a request to designate expert witnesses out of time. On February 26, 2013, Adem filed a reply to the Board's response.

13. By order issued February 26, 2013, we acknowledged the Board's failure to follow our deadline, but denied the motion for partial summary decision and allowed the Board to designate experts out of time. On March 1, 2013, Adem filed a motion to reconsider, and the Board filed a response on March 4, 2013. Adem requested us to either grant the motion for partial summary decision or to revise the Plan.

14. By order issued March 11, 2013, we reconsidered our prior order. We again denied Adem's motion for partial summary decision, but granted his motion to revise the Plan. We extended the deadline for taking the deposition of the Board's expert witnesses to April 17, 2013.

[4] Exhibit 4 to Petitioners exhibit 1.

[5] We include this information in our Findings of Fact because these facts are essential to whether we should reconsider our order excluding the testimony of the Board's expert witness.

15. On June 18, 2013, the Board filed a motion for continuance of the hearing. Adem filed a response on June 18, 2013, opposing the motion for continuance, stating that he would continue to suffer both personally and professionally by a further continuance. On June 24, 2013, we denied the Board's motion for continuance. Both parties requested a revised scheduling order, which we issued on June 24, 2013. Under the revised scheduling order, the Board was to provide Adem with its witness list, exhibit list, and deposition designations by 5:00 p.m., June 27, 2013; and Adem was to provide the Board with his witness list, exhibit list, and deposition designations by 5:00 p.m., July 2, 2013.

16. On June 21, 2013, Adem filed a motion in limine to exclude two of the Board's medical expert witnesses, Dr. Morton Kern and Dr. Jonathan Tobis, arguing that their testimonies were inconsistent with each other, and that it was not clear which records Kern relied upon in forming his opinions in his deposition taken on April 13, 2013. On July 1, 2013, the Board filed a response to the motion in limine.

17. On June 28, 2013, Adem filed a motion to compel the Board to comply with our June 24 order and motion for sanctions. Also on June 28, 2013, the Board sent Adem a notice of deposition of its expert witness, Kern, to be held on July 5, 2013. Later on June 28, 2013, Adem filed an opposition to the Board's notice of telephonic deposition and motion for further sanctions. Attached to Adem's second motion of June 28, 2013, was an e-mail from the Board stating its intention of taking "a quick telephone deposition of Dr. Kern next Friday[.]"

18. Adem argued that the Board was attempting a "do-over" deposition of Kern to correct the problems Adem noted in his motion in limine. The Board admitted that the purpose of deposing Kern again was to "clear up the record as it relates to the records that Kern relied on in forming his opinion."[6]

[6] Petitioner's response to Respondent's motion in limine, p. 1.

19. Adem also argued that this deposition would fall beyond the time frame set by our order of March 11, 2013, which required depositions of the Board's experts to be completed by April 17, 2013.

20. By order issued July 2, 2013, we agreed that the Board was unable to timely comply with this Commission's order and such failure to timely comply would prejudice Adem at hearing. We granted Adem's second motion of June 28, 2013, and ordered that Kern could not be deposed again. We excluded the expert testimony of Kern as requested in Adem's motion in limine.

21. On July 2, 2013, the Board filed a motion to reconsider our order striking Kern's testimony. On July 3, 2013, Adem filed a response. By order issued July 3, 2013, we affirmed our order striking Kern's testimony.

22. At the hearing, on July 9, 2013, the Board decided not to offer Tobis' testimony, and offered Kern's deposition and Kern's testimony as an offer of proof.[7]

Conclusions of Law

We have jurisdiction over this case.[8]

I. Motion in Limine/Offer of Proof

The Board argues that we should reverse our previous order and allow Kern's deposition in evidence. We took that issue with the case. The Board argues that we abused our discretion in excluding Kern's testimony, describing it as a sanction resulting from the Board's providing an amended exhibit and witness list and deposition designations one day beyond the deadline as provided in the Plan. This is an incorrect representation of the reason we excluded the testimony. In two orders, we extended the time to provide the information and denied Adem's motion for partial summary decision and motion for sanctions as they related to the lists and

[7] Tr. at 20-21.

[8] Section 621.045. Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

designations. In our July 2, 2013 order, we made it clear that we were not excluding Kern's testimony as a sanction for any failure as to written discovery:

> On June 27, 2013, the Board listed as its proposed exhibits at hearing all of the medical records of patients and the entire deposition transcripts from four doctors that the Board obtained during discovery. Adem alleges that by simply listing everything the Board obtained during discovery, it failed to comply with our revised scheduling order. Based on the fact that the Board voluntarily dismissed three counts of its eleven-count complaint on May 31, 2013, there is no reason for the Board to designate the entire patient and deposition records, as if all of the original counts remain in the case. We agree with Adem that this response fails to comply with our order by failing to provide meaningful information; it is clearly inadequate to allow Adem to prepare his case.
>
> However, we deny Adem's motion to compel or for sanctions for the following reason. The Board's inability to review its records and separate what is relevant from what is irrelevant to its case will blur and confuse the relevant facts in the record before us. The Board bears the burden of proving that Adem is subject to discipline. The introduction of voluminous, irrelevant information, blurring the relevant facts, will work to the detriment of the party bearing the burden of proof.

Our basis for excluding Kern's testimony was our acceptance of Adem's argument that Kern's April 18, 2013 deposition did not state what records he relied on to form his opinions. Neither the Board nor Kern provided Adem with records upon which the expert relied – records that Adem needed to effectively cross-examine Kern. What we refused to allow was what Adem characterized as the Board's attempt to conduct a "do-over" deposition of Dr. Kern to correct the problems Adem noted in his motion in limine. In our July 2, 2013 order, we stated:

> Regarding Adem's second motion of June 28, 2013, his opposition to the Board's notice of telephonic deposition states that the Board is attempting a "do-over" deposition of Dr. Kern to correct the problems Adem noted in his motion in limine. The Board admits that the purpose of deposing Dr. Kern again is to

> "clear up the record as it relates to the records that Dr. Kern relied on in forming his opinion."
>
> Adem argues that this deposition falls beyond the time frame set by our order of March 11, 2013, which required depositions of the Board's experts to be completed by April 17, 2013. We agree that the Board is again unable to timely comply with this Commission's order and such failure to timely comply will prejudice Adem at hearing. Furthermore, the time frame of all of the events that occurred prior to this hearing demonstrates that the Board had ample time to prepare for hearing. However, the Board failed to do so until three weeks prior to a hearing that was scheduled eight months earlier at the request of both parties. Therefore, in the interest of fairness, we cannot make further exceptions to our scheduling order to favor the Board over Adem. We must enforce our scheduling order of March 11, 2013, which was created after the Board's initial failure to adhere to a jointly filed scheduling order adopted by this Commission. We grant Adem's second motion of June 28, 2013. Dr. Kern shall not be deposed again.
>
> We enforce our scheduling order and order that Dr. Kern shall not be deposed again. We exclude the expert testimony of Dr. Kern as requested in Adem's motion in limine.

We found Adem would suffer prejudice if the Board were allowed to take an additional deposition just a few days before the hearing in order to cure a defect in the original deposition. We found that there was insufficient evidence of the record supplied to Kern to allow Adem's counsel to "intelligently cross-examine the expert concerning what facts he utilized to formulate his opinion."[9] Therefore, we struck Kern's testimony, while specifically allowing the testimony of Tobis, the Board's other designated expert witness. At the hearing, the Board did not offer Tobis' testimony.

The Board presented Kern's deposition and his live testimony, via telephone, as an offer of proof. An offer of proof is required to demonstrate to the Commissioner what the rejected

[9] ***State ex rel. Tracy v. Dandurand***, 30 S.W.3d 831, 835 (Mo. banc 2000) (quoting ***State ex rel. Seitrich v. Franklin***, 761 S.W.2d 756, 758 (Mo. App., S.D. 1988)).

evidence would show, "with the hope of convincing him or her to reconsider."[10] The second purpose of an offer of proof is to "preserve for the appellate courts' review a record of what evidence was offered but rejected."[11] "An offer of proof must show three things: 1) what the evidence will be; 2) the purpose and object of the evidence; and 3) each fact essential to establishing the admissibility of the evidence."[12]

As part of its offer of proof at the hearing, the Board attempted to cure the error that formed the basis of our exclusion of Kern's testimony – identifying the records Kern relied on in forming his expert opinions. We requested briefing on the issue of whether we should reverse our previous order and allow Kern's deposition in evidence, but, as noted above, the Board merely misstates the reason we struck the testimony as a sanction. The Board states: "Dr. Kern's testimony is competent, is supported by his identification of the underlying patient care records which were admitted in evidence at the hearing, and would clearly assist the Commission in deciding the merits of this case."[13] Adem attacks the identification of the patient care records.

As part of its offer of proof, the Board introduced a FedEx package it received from Kern and argued that the contents were the records Kern relied on in formulating his opinions on Adem's care of patients. The Board had sent records to Kern and he sent them back to the Board. The Board tried to establish by Kern's telephone testimony at the hearing that these were the records he relied on in forming his opinions for the deposition. But Kern's testimony at the hearing failed to show this. Kern testified:

> Q: [Kistner] I'm asking you if it's true that at your deposition we did not have materials with respect to each of these five patients that you claim you relied upon in formulating your opinions?

[10] ***State ex rel. Praxair, Inc. v. Missouri Public Service Comm'n***, 344 S.W.3d 178, 185 (Mo. banc 2011).
[11] *Id*.
[12] ***State v. Tisius***, 92 S.W.3d 751, 767 (Mo. banc 2002).
[13] Petitioner's brief in support of its proposed findings of fact and conclusions of law, p. 7.

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A: So at the deposition the IVUS material that I had originally reviewed was not available to look at again.

Q: Nor were the patient records, correct?

A: The patient records were on the discs.

Q: But we couldn't get to them. We couldn't present them to you, could we, at that deposition? We tried and couldn't do it, right?

A: I believe they were on the discs. I'm not sure that's true.

Q: So you don't recall attempting to utilize the discs to produce those records and being unable to do so?

A: I couldn't produce the IVUS records, that's correct.

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Q: And you now have them, right?

A: I was sent still frames from the IVUS records that were – I don't know where they came from, but they generated it and I did see the original IVUS images I presume on the discs that were sent to me.

Q: And you now claim that these IVUS still frames – well, strike that. Just to be clear, you had never seen these IVUS still frames before you generated your five reports with respect to these five patients, correct?

A: No. I told you I can't recall whether I saw them, but in my reports I refer to them and so I believe these are those images.

Q: But you cannot state with a certainty that you actually saw the IVUS still frames before you prepared your reports, correct?

A: That's not correct. I did see IVUS still frames and it's in the report and I indicate that.

Q: Do you know whether the IVUS still frames that you were sent by Ms. Skinner after your deposition were the same IVUS still frames that you now claim you relied upon in formulating your report?

A: That, I can't tell.[14]

Adem also pointed out discrepancies between the records Kern claimed he relied on at his deposition and the records he mailed back to the Board. Even with the Board's offer of proof, we cannot determine upon which records Kern based his opinions. It would be particularly prejudicial to Adem to allow the deposition testimony as evidence since he did not have access to the records at the deposition for cross-examination.

The Board's offer of proof did not convince us to reconsider our exclusion of Kern's testimony. The matter is preserved for judicial review.

II. Cause for Discipline

The Board has the burden of proving that Adem has committed an act for which the law allows discipline.[15] The Board argues there is cause for discipline under § 334.100:

> 2. The Board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:
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> ***
>
> (4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter, including, but not limited to, the following:
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> ***
>
> (c) Willfully and continually performing inappropriate or unnecessary treatment, diagnostic tests or medical or surgical services;

[14] Tr. at 98-101.
[15] ***Missouri Real Estate Comm'n v. Berger***, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

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> (5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public; or incompetency, gross negligence, or repeated negligence in the performance of the functions or duties of any profession licensed or regulated by this chapter. For the purposes of this subdivision, **"repeated negligence"** means the failure, on more than one occasion, to use that degree of skill and learning ordinarily used under the same or similar circumstances by the member of the applicant's or licensee's profession;
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> ***
>
> (14) Knowingly making, or causing to be made, or aiding, or abetting in the making of, a false statement in any birth, death or other certificate or document executed in connection with the practice of the person's profession[.]

A. Counts II, III, IV, V, IX, X, XI

Patient Care Allegations – Subdivisions (4)(c) and (5)

Absent its offer of proof, which we allowed but which did not change our decision excluding Kern's testimony, the Board offered no other expert testimony about Adem's care of patients. Normally, expert testimony is required to prove that "the individual engaged in a gross deviation from the standard of care."[16] We may determine that such conduct violates a standard of care without expert testimony if an inexperienced person could draw a fair and intelligent opinion from the facts.[17] This case involves the necessity of performing such procedures as stent implantation of a coronary artery and whether the implantation was supported by tests and conditions of the patients. Expert testimony was required in this case. The Board provided none.

[16] ***Kerwin v. Mo. Dental Bd***., 375 S.W.3d 219, 226 (Mo. App., W.D. 2012). *See also* ***Tendai v. Missouri State Bd. of Reg'n for the Healing Arts***, 161 S.W.3d 358, 367 (Mo. banc 2005) (overruled on other grounds) ("When the standard of care involves matters outside the competence and understanding of ordinary lay witnesses, it must be established by expert witness testimony.").

[17] ***Perez v. State Bd. of Regis'n for the Healing Arts,*** 803 S.W.2d 160, 164 (Mo. App., W.D. 1991).

The Board failed to present any evidence to support its claim of deficient patient care, not – as it asserts – because we prevented it from doing so, but based on its own actions in conducting an inadequate deposition of Kern and attempting to fix this error after the deadline we allowed for depositions and mere days before the hearing, and by failing to offer any other evidence to prove its case. The Board failed to meet its burden of proof, and we find no cause for discipline under § 334.100.2(4)(c) or (5) for the conduct alleged in Counts II, III, IV, V, IX, X, and XI.

B. Count I

The Board argues that Adem's conduct in submitting a forged letter in support of his treatment of a patient is misconduct, misrepresentation, and fraudulent, unethical, and unprofessional conduct[18] in the performance of the functions or duties of a physician, and is cause for discipline under § 334.100.2(4) and (14).

Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with some valuable thing belonging to him.[19] It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.[20] Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.[21] Misconduct is the intentional commission of a wrongful act.[22] Misconduct means "the willful doing of an act with a wrongful intention[;] intentional wrongdoing." Unethical conduct and unprofessional conduct include "any conduct which by common opinion and fair judgment is determined to be unprofessional or dishonorable."[23] "Ethical" relates to moral standards of professional conduct.[24]

[18] The Board's complaint does not list dishonesty as a cause for discipline. Complaint, p. 3.
[19] ***State ex rel. Williams v. Purl***, 128 S.W. 196, 201 (Mo. 1910).
[20] MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004).
[21] *Id*. at 794.
[22] ***Grace v. Missouri Gaming Comm'n***, 51 S.W.3d 891, 900 (Mo. App., W.D. 2001).
[23] ***Perez v. Missouri Bd. of Regis'n for the Healing Arts***, 803 S.W.2d 160, 164 (Mo. App., W.D. 1991).
[24] MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 429 (11th ed. 2004).

Function is defined as "1 : professional or official position : OCCUPATION 2 : the action for which a person or thing is specially fitted or used or for which a thing exists : PURPOSE . . . . the acts or operations expected of a person or thing."[25] Duty is defined as "2 a : obligatory tasks, conduct, service, or functions that arise from one's position (as in life or in a group) . . . . 3 a : a moral or legal obligation[.]"[26]

False is defined as:

> 1 : not genuine . . . 2 a : intentionally untrue . . . b : adjusted or made so as to deceive . . . c : intended or tending to mislead . . . 7 a : based on mistaken ideas[.[27]]

Connection means "1 . . . a : causal or logical relation or sequence (the connection between two ideas) b : causal or logical relation or sequence (the connection between two ideas)[.]"[28]

Adem admitted that he forged the letter, expressed remorse, and called his conduct a serious mistake. Considering that this was a forged document designed to support his treatment of a patient at a time when that treatment was under review, we agree with the Board that this is more than a mistake. We also believe that the conduct constitutes misconduct, misrepresentation, fraud, and unethical and unprofessional conduct. The letter included a false statement – that it was written by another physician who supported Adem's treatment of S.B. It was intended to mislead anyone who read it.

These findings do not end our analysis, however, because Adem argues that the conduct was not in the performance of the functions or duties of the profession as required by subdivision (4) or in connection with the practice of the profession as required by subdivision (14).

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[25] MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY at 507.
[26] *Id*. at 388.
[27] *Id* at 451.
[28] *Id*. at 264.

Subdivision (4) – Functions or Duties

Adem cites ***Missouri Bd. of Reg'n for the Healing Arts v. Levine***,[29] a case in which a court found that a physician who gave false answers under oath when testifying as a non-treating medical expert was not subject to discipline because the conduct of testifying was not the performance of the functions or duties of a physician. We have cited the definitions of "function" and "duty" upon which the court relied in ***Levine***.[30] The court stated:

> The Board maintains that Levine's opinion of the standard of care rendered to the plaintiff in the medical malpractice action was equivalent to a diagnosis. This court is unwilling to accept the Board's characterization of "diagnosis." Levine did not diagnose and treat the sick merely by giving expert testimony as a non-treating physician. Furthermore, under the plain language of "function" and "duty," testifying as a non-treating medical expert is not an "obligatory task," nor "a moral or legal obligation," nor even an act "expected of" a person. This court holds that acting as a non-treating expert medical witness does not constitute the practice of medicine or the function or duty of a licensee and that Levine is not subject to discipline under § 334.100.2(5).[[31]]

The ***Levine*** court relied on the definition of the "practice of medicine" as the "diagnosis and treatment of the sick."[32] When testifying or even offering an expert opinion, the non-treating medical expert was not diagnosing or treating the sick. The difference in the case before us is that Adem was the treating physician.

The parties characterize the Catchings letter differently. The Board argues that the letter was designed to respond to the MEC's request for information about his treatment of S.B. Providing the Catchings letter in this context does appear more like the functions or duties of a physician – providing requested information about a patient that the physician treated. Adem

[29] 808 S.W.2d 440 (Mo. App., W.D. 1991).

[30] *Id* at 442. The definitions we cited above were the same in the 1977 version of WEBSTER'S NEW COLLEGIATE DICTIONARY that was used by the ***Levine*** court.

[31] ***Levine***, 808 S.W.2d at 443.

[32] *Id*.

argues that he gave the letter to Ford – the hospital's CEO – not to the MEC, and was merely trying to curry favor with the new administrator. We return to the ***Levine*** court's distinction, whether providing a letter to either Ford or the MEC constitutes the treatment and diagnosis of a patient. We find that it does. The Catchings letter pertains to the treatment and diagnosis of S.B. The letter supports Adem's treatment of a patient at a time when he was under review for that treatment. The functions and duties of a physician also include being honest in connection with any review of that physician's patient care.

Submitting the forged letter constitutes misconduct, fraud, misrepresentation, unethical conduct and unprofessional conduct in the performance of the functions or duties of a physician. There is cause for discipline under § 334.100.2(4).

Subdivision (14) – In Connection With

We also find that the conduct was clearly "in connection with the practice of [Adem's] profession." The ***Levine*** court specifically referenced § 334.100.2(14) as an example of the legislature providing cause for discipline for conduct that "relate[s] to patient care only indirectly, if at all."[33] Whether Adem provided the letter to Ford or to the MEC is irrelevant under this subdivision because under Adem's own explanation – that he just wanted Ford to like him – he knowingly provided a document concerning a patient he had treated. The document was a false statement purporting to be from another physician who approved of Adem's treatment of S.B.

The Catchings letter was a document executed in connection with the practice of Adem's profession. Accordingly, there is cause for discipline under § 334.100.2(14).

[33] ***Levine***, 808 S.W.2d at 443.

Summary

There is cause for discipline under § 334.100.2(4) and (14). There is no cause for discipline under § 334.100.2(4)(c) or (5) related to patient care.

SO ORDERED on April 17, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner